THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.16674 OF 2006

DATED: 11th AUGUST, 2006.

Between:

1. M/s. Sravan Dall Mill (P) Limited,
   Rep. by its Managing Director
   Mr. V. Dayakar Rao. … Petitioner

   And

1. Central Bank of India, rep. by its Chief
   Manager, Corporate Finance Branch,
   Hyderabad and another. .. Respondents

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ORDER :

The petitioner, a company registered under the Companies Act, 1956, is engaged in the business of Dal products. It is stated that the 1st respondent Bank had sanctioned cash credit of Rs.45 lakhs on hypothecation of the raw material, stock in progress, finished goods, consumable stores, spares, packing material. A further sum of Rs.40 lakhs was also sanctioned as term loan against the mortgage of immoveable properties belonging to the Directors of the petitioner company. Subsequently, on a request made by the petitioner company, the 1st respondent Bank had enhanced the existing limits of the loan from Rs.85 lakhs to Rs.137.72 lakhs. It is alleged that though the petitioner has been regular in repayment, the 1st respondent Bank had treated the account of the petitioner company as Non-Performing Asset (NPA) and issued a notice dated 4-6-2006 under Section 13 (2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the Securitisation Act, 2002'), showing a sum of Rs.1,31,57,549-05 ps as outstanding dues as on 31-5-2006.

The said notice is under challenge in this writ petition contending inter alia that since the petitioner company is neither a willful defaulter nor a chronic defaulter attracting the guidelines issued by the Reserve Bank of India for classification of the loan account as NPA, the impugned action of the 1st respondent Bank in invoking the

provisions of the Act is without jurisdiction.

I have heard Sri D.V. Sitharama Murthy, the learned Counsel representing Smt. Ch. Veda Vani, advocate appearing for the petitioner, in detail.

The learned Counsel vehemently contended that there is absolutely no reason to treat the petitioner's account as NPA since the said account cannot be classified as sub-standard, doubtful or loss asset and consequently the respondent Bank cannot enforce the security by invoking the deterrent provisions of the Securitisation Act. It is also contended that even where the account is classified as NPA the coercive steps under Section 13 (2) of the Act cannot be initiated as a matter of course, but it is necessary for the 1st respondent Bank to exercise the discretion judiciously and objectively taking into consideration the facts and circumstances of the case. The learned Counsel vehemently contended that the petitioner's loan account under no circumstances can be treated as sub-standard so as to invoke the provisions of the Act and therefore the impugned notice is without jurisdiction.

At the outset, it is to be noted that the fact that the petitioner company availed loan from the respondent bank hypothecating the movable properties and creating mortgage in respect of the immovable properties is not in dispute. It is also not in dispute that the respondent Bank is a secured creditor within the meaning of Section 2 (1) (zd) of the Securitisation Act. The word 'security interest' has been defined under Section 2 (1) (zf) as right, title and interest of any kind whatsoever upon property created in favour of any secured creditor and includes any mortgage, charge, hypothecation and assignment. Admittedly, such security interest has been created in favour of the respondent. If that be so, Section 13 (1) of the Securitisation Act entitles the respondent – secured creditor to enforce the security interest without the intervention of the Court or Tribunal in accordance with the provisions of the Act. Hence, it cannot be said that the

impugned notice suffers from inherent lack of jurisdiction. As a matter of fact, the impugned notice under Section 13 (2) of the Act is in the nature of a show-cause notice requiring the borrower to discharge his liabilities failing which the secured creditor shall be entitled to exercise the rights under sub-section (4) of Section 13 of the Securitisation Act.

The further contention of the petitioner is that since the petitioner has not committed 'default' within the meaning of Section 2 (1) (j) of the Act and particularly since the petitioner's account cannot be treated as 'Non-Performing Asset' within the meaning of Section 2 (1) (o) of the Act, the impugned notice is without jurisdiction. Even assuming that the above contention of the petitioner is correct, in my considered opinion, it amounts to an irregularity in exercise of jurisdiction conferred under Section 13 of the Securitisation Act. Hence, on that ground, the impugned notice cannot be held to be bad on account of lack of jurisdiction.

The alleged irregularities, if any, with regard to exercise of jurisdiction can always be raised as provided under sub-section (3A) of Section 13 of the Securitisation Act, in which event the secured creditor is bound to consider the same and in case the objections are found to be not tenable, the same shall be communicated together with the reasons for non-acceptance to the borrower.

Therefore, it is not necessary for this Court to enter into the issue whether the petitioner committed any 'default' within the meaning of Section 2 (1) (j) of the Act or whether the petitioner's account is a 'Non-Performing Asset' within the meaning of Section 2 (o) of the Act and to record a finding thereon. The said objections are required to be considered by the respondent under subsection (3A) of Section 13 of the Act and the petitioner shall be communicated either accepting or rejecting together with the reasons therefor. Hence, the writ petition at this stage is premature and cannot be entertained.

Accordingly, the Writ Petition is dismissed. No costs.

However, the petitioner is granted liberty to raise all the objections as available under law and to make a representation to the 1st respondent Bank, if not already made, within a period of two weeks from the date of receipt of this order, in which event, the 1st respondent shall consider the same in terms of sub-section (3A) of Section 13 of the Securitisation Act.

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G. ROHINI, J.

Dt. 11-8-2006

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